IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1216 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

INTERLINK PETROLEUM LIMITED

Versus

HASMUKH RAMJIDAS SHAH

Appearance:

MR VS DESAI for Petitioners

MR SB VAKIL for Respondent No. 1, 2.

MS P.J. DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 12/01/2001

ORAL JUDGEMENT

1. Interlink Petroleum Limited and others Petitioners-Original defendants No.2 and 3 have filed this Civil Revision Application under Sec.115 of the Code of Civil Procedure, 1908 (hereinafter referred to as `the Code') challenging the order 19th March, 1996, passed

below application of Section 80 of Code of Civil Procedure Notice in Special Suit No.164 of 1996 passed by the learned 3rd Jt.Civil Judge(S.D.), Vadodara, whereby the learned trial Judge was pleased to allow the said application as prayed for and also ordered that the notice under Sec.80 be waved and plaintiffs are allowed to file present suit for registration.

2. The facts giving rise to this application are as under:

2.1 The plaintiff No.1 Shri Hasmukh Ramjidas Shah and Jindal Energy Limited - plaintiff No.2 have filed a suit against the defendant No.1-Union of India and against defendant No.2 Interlink Petroleum Ltd. for a declaration and enforcement of a contract agreement and injunction as prayed for in para 14 of the plaint. That suit was filed without addressing notice under Sec.80 of the Code. In that suit, the plaintiffs prayed that requirement of Sec.80 notice may be waved and plaintiffs may allow to file the present suit. The defendants No.2 and 3 present petitioners at the first instance objected to the same and subsequently Union of India objected the same. After hearing the learned advocates for the plaintiffs and defendants No.2 and 3, the learned Judge of the trial Court held that there was urgency shown by the plaintiffs and prayer of the plaintiffs is required to be granted and, therefore, directed suit be registered without notice under Sec.80.

2.2 Being aggrieved and dissatisfied with the said order, the petitioners - original defendants No.2 and 3 have filed this application. Before matter reached here, it may also be noted that Union of India has raised similar objection and has straightway filed Civil Revision Application No.1102/96 before this Court. When the matter was reached herein before this Court, on 10th February, 1998, this Court (Coram: N.N. Mathur, J.) passed the following order:

> "Learned Counsel says that the revision application has become infructuous. Dismissed as having become infructuous. Rule is discharged."

3. Mr.Desai, learned advocate for the petitioners has also indicated that the suit is progressed and the parties have placed the settlement before the Court. In view of the same, there is no need to adjudicate this matter in this behalf and this matter also become infructuous in view of the previous order of this Court dtd.10.02.1998 passed in CRA No.1102 of 1996. Hence, in

view of the above, this application does not survive as it has become infructuous. Rule is discharged.

4. Before I part with Civil Revision Application, Mr.Desai, learned advocate for the petitioners has submitted that, he has filed a note dated 23rd March, 1998, to tax his client's costs qua his contractual costs, which has been produced before the Registry. He stated that his note may be considered by the Registry in this behalf. In support of the same he has relied upon Secs. 3 and 4 of the Legal Practitioners (Fees) Act, 1926, which reads as under:

"Sec.3. Agreement for engagement of legal practitioner Any legal practitioner who acts or agrees to act for any person may by private agreement settle with such person the terms of his engagement and the fee to be paid for his professional services."

"Sec.4 Right of legal practitioner to sue for fees:- Any such legal practitioner shall be entitled to institute and maintain legal proceedings for the recovery of any fee due to him under the agreement, or, if no such fee has been settled, a fee computed in accordance with the law for the time being in force in regard to the computation of the costs to be awarded to a party in respect of the fee of his legal practitioner."

4.1 He has also relied upon Gujarat High Court Rules, 1993, particularly Rules 138 and 140.

"Rule 138 - Procedure for preparation of Decrees:- When a judgment initialled by the Judge or Judges delivering it is received in the office, the office shall:

(i) Prepare the draft of the decretal order on the Farad and also the draft of the bill of costs. The draft decretal order and the draft of bill of costs together with the copy of the judgment shall be sent to the Advocate's Room for the approval of the Advocates, concerned and a notice in that behalf also be put up in the Advocate's room.

(ii) If the draft decretal order and the draft bill of costs prepared by the office is approved by the Advocate the Advocate shall attest them in

token of their approval.

(iii) If the Advocate do not approve the draft decretal order, or the draft bill of costs, they shall put in their notes of objection stating specifically the grounds of their objection after serving a copy thereof on the otherside.

(iv) If the Advocates require any clarification or correction in the judgment, they shall put in their notes for speaking to the minutes on the Judgment stating specifically the clarification or correction sought therein after serving a copy of the note on the other side.

(v) If the Advocates fail to attend or to file their objections to the draft decretal order or draft bill of costs or to file a note for speaking to the minutes of the Judgment within fourteen days from the date on which the matter was sent to the Advocate's Room and notified as above, or atleast the same in token of their approval, the office shall prepare the decree and the final copy of the judgment which shall be signed by the Deputy Registrar and the bill of costs shall be finalised and signed by the Deputy Registrar and the Taxing Officer.

(vi) After the decree and the bill of costs are signed as prescribed in sub-rule(iv) above, no motion for amendment of the decree or bill of costs or for speaking to minutes on the judgment shall be entertained except on a regular stamped Application filed in that behalf. The Deputy Registrar, may, however, correct clerical or arithmetical errors in decree or order which are brought to his notice."

"Rule 140 - Objection to draft decretal order and bill of costs:- Objections to the draft decretal order shall be decided by the Deputy Registrar and objections to the bill of costs by the Taxing Officer, after hearing the Advocates or the Parties, if necessary. Any Advocate or party dissatisfied with the decision of the Deputy Registrar or the Taxing Officer shall immediately file a note for placing the matter before the Court for revision of the impugned order. When such a note is filed, the decree or the bill of costs, as the case may be, shall not be signed until the decision of the Court."

4.2 He has also relied upon the Supreme Court Rules, Rules 23 and 24 of Chapter 42 taxation which is as under:

"23. Where a dispute arises between the advocate on record and his client as to the fees and charges payable to the advocate, either party may apply to the Chamber Judge for an order to have the bill taxed and, on an order for taxation being made, the Taxing Officer may proceed to tax the bill. The application when made by the advocate, shall be accompanied by a copy of the bill sought to be taxed. Provided that where the client has expressed his consent in writing to the taxation of costs between himself and his advocate on record in any proceeding, the advocate may present his bill of costs in that proceeding for taxation without an order of the Chamber Judge, and the Taxing Officer shall thereupon proceed to tax the bill."

"Rule 24. In every case of taxation between advocate and his client, the client shall be duly summoned by the Taxing Officer to attend the taxation, and the summons shall be served on the client at least two weeks prior to the date fixed for taxation."

4.3 In view of the above provisions, Registry is directed to prepare a bill of cost in this behalf. Liberty is reserved to the petitioner and to the petitioner's advocate. Rule is discharged. The parties shall bear their own costs.

(K.M. Mehta, J.)

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